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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act	)	
of 1996:	)	
	)	
Telecommunications Carriers'	)	
Use of Customer Proprietary	)	
Network Information and	)	
Other Customer Information	)	

REPLY COMMENTS OF
THE INDEPENDENT ALLIANCE

The Independent Alliance, pursuant to Section 1.429(g) of the Commission's rules,[1] hereby respectfully submits its reply comments on the oppositions and comments filed in response to the Petitions for Reconsideration of the *Second Report and Order*, FCC 98-27, released February 26, 1998, in the above referenced proceeding ("Second Report and Order").

I. The record establishes that repeal of the electronic audit mechanism and flag software requirement is warranted.

The record demonstrates that the computer driven safeguard requirements, i.e., the electronic audit mechanism ("tags") and software flags ("flags"), set forth in Sections 64.2009(a) and (c) of the Commission's rules should be eliminated. There exists widespread industry agreement that the regulations are extremely costly, overly burdensome and unjustified.[2]

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[1] 47 CFR §1.429(g).

[2] *See, e.g.*, Airtouch at 4; Ameritech at 3; Arch at 5; AT&T at 13 &17; Bell Atlantic at 11; C&W at 7; E.Spire at 5; GTE at 17; Intermedia at 12; NTCA at 2. Unless otherwise specified, all documents cited relate to comments filed June 25, 1998 in CC Docket No. 96-115.

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It is apparent that the Commission underestimated both the monetary and nonmonetary costs of its computer-driven CPNI safeguard mechanisms. Carriers have demonstrated that the costs of implementing the tags and flags could reach hundreds of millions of dollars[3] and could potentially cost over one hundred dollars per customer line.[4] The tag requirement alone would create an annual data storage burden in excess of 100 trillion bytes of information,[5] retarding data retrieval significantly.[6] Larger carriers have stressed the flag requirement is burdensome and unnecessary because there exist many types of databases that allow entry into a customer's account other than the first screen.[7] Industry representatives also concur that implementing the tags and flags within the eight month time frame imperils necessary focus on the year 2000 issue because it involves utilizing the same resources that are currently dedicated to resolve this critical issue.[8] These facts invalidate the Commission's presumption that such computerized safeguard requirements "will not be overly burdensome."[9] The record simply does not support the Commission's conclusion that the computer modifications necessary to implement the tags and flags are "relatively easy."[10] Absent specific congressional directives that such

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3 *See, e.g.*, AT&T at 16 & 18.

4 *See, e.g.*, BellSouth at 10.

5 *See, e.g.*, GTE at 18.

6 *See, e.g.*, AT&T at 15.

7 *See, e.g.*, AT&T at 17.

8 *See, e.g.*, Airtouch at 4; AT&T at 14; C&W at 8.

9 Second Report and Order, at ¶ 190.

10 Second Report and Order, at ¶¶ 194 & 198.

requirements are necessary to protect consumer privacy, the imposition of burdensome computer driven safeguards is unjustified.[11]

MCI opposes blanket elimination of safeguards other than the tag requirement absent specific demonstrations that the burdens associated with another requirement is excessive once the tag requirement is eliminated.[12] Such individualized waiver requests would be an inappropriate consumption of public and private resources given the clear evidence that both the tag and flag requirements are overly burdensome. Moreover, for small and rural carriers, the record establishes that the measures are not only burdensome but unnecessary in light of the way they operate.[13]

Accordingly, the Commission should repeal the tag and flag requirements because the burdens imposed are unjustified.[14] At a minimum, an exemption from these regulations is warranted for small and rural carriers because the relative burdens of compliance is magnified due their size.[15]

II. Alternatively, the record establishes that the Commission should forebear from requiring rural and small carriers to implement the tag and flag requirements.

The record supports forbearance from requiring small and rural carriers to implement the

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[11] *See, e.g.*, Airtouch at 6; Arch at 5; AT&T at 14; Bell Atlantic at 11; GTE at 18; Intermedia at 10; US West at 10.

[12] MCI at 51-52.

[13] NTCA at 4-5; Independent Alliance Petition at 3-5.

[14] The Independent Alliance supports C&W's position that the Commission avoid imposing specific safeguard compliance methods and provide carriers with flexibility in implementing individually appropriate CPNI safeguard measures. C&W at 9.

[15] *See* NTCA at 4, Independent Alliance Petition at 5-7.

tag and flag safeguard measures.[16] NTCA and other carriers demonstrate that enforcement of the tag and flag requirements is neither necessary to ensure that practices of small and rural carriers are reasonable[17] nor necessary to protect consumers,[18] and is consistent with the public interest.[19] MCI's opposition to NTCA's request for forbearance is unfounded.[20] NTCA specifically addressed each of the criteria required to establish that forbearance is appropriate.[21] Accordingly, the "the FCC not only has the option of granting regulatory forbearance in this instance, it is required to do so."[22]

III. The Commission should reconsider and repeal § 64.2005(b)(1) based upon evidence presented in the record.

An overwhelming majority of the parties seeking reconsideration of the Second Report and Order have requested that the Commission reconsider its conclusion that CPE and/or information services are not within the scope of a carrier's total service relationship with a customer and are not "necessary to or used in" the provision of services within that relationship.

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[16] *See* NTCA at 3. NTCA seeks forbearance from both the tag and flag safeguards. NTCA Petition at 8 (collectively referring to the flagging and tagging safeguards as the "auditing and tracking" procedures/requirements).

[17] NTCA at 3-4; Independent Alliance Petition at 2-8.

[18] NTCA at 4; Independent Alliance Petition at 4.

[19] *Id.*

[20] MCI indicated that NTCA did not attempt to justify its request for forbearance. MCI at 53.

[21] NTCA Petition at 7-11. NTCA further reiterated and supported its request for forbearance of the tag and flag requirements based on other petitions filed. *See* NTCA at 3-6. NTCA's request is further supported by the comments made in the Independent Alliance's Request for Reconsideration. *See* Independent Alliance Petition at 1-10.

[22] NTCA at 6.

Consensus on this issue is found in all segments of the industry.[23] Collectively, carriers have established that customers perceive "total service" to include not only the services related to the underlying relationship with the carrier, but also encompass CPE and information services.[24] Furthermore, as carriers have demonstrated, it is readily apparent in today's technologically advanced society that customers faced with ever-changing services and products are dependent upon and expect their carriers' utilization of CPNI to ensure that customers are sufficiently informed to be able to optimize their use of the services and products.[25] Accordingly, the Commission should reconsider the application of § 64.2005(b)(1) and repeal it entirely.

IV. The "Winback" prohibition does not serve the public interest.

An overwhelming majority of the commentors agree that Section 64.2005(b)(3) of the Commission's rules, the "winback" prohibition, should be reconsidered because winback offers are procompetitive, within the parameters of the customer-carrier total service relationship, and greatly benefit consumers.[26] The anti-winback provisions impede the availability of competitive telecommunications services to customers with no countervailing benefit for consumer

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[23] Wireline (Bell Atlantic at 9; GTE at 3; US West at 2), and wireless companies (Bell Atlantic Mobile at 17; Celpage at 6; Arch at 3), interexchange (Sprint at 1; AT&T at 5; MCI at 2) and exchange companies (Bell Atlantic at 9; US West at 2; GTE at 3) and major trade associations (USTA Petition at 2; NTCA Petition at 3; CTIA Petition at 7) all demonstrate that the Commission's artificial separation will not serve the public interest.

[24] *Id.*

[25] *Id.*

[26] Ameritech at 3; Arch at 4; AT&T at 3; BellSouth at 8; Celpage at 11; C&W at 2; E.Spire at 4; Frontier at 4; GTE at 9; Intermedia at 2; MCI at 15; SBC at 19; Sprint at 1; TRA at 6; US West at 3.

expectations for privacy.[27] In addition to the anti-competitive impact of the winback prohibition, there is no "statutory prohibition on the use of CPNI to win back a customer with whom the carrier has a service relationship."[28] Furthermore, the Commission did not sufficiently notify parties or give them adequate opportunity to respond to a proposed prohibition of utilization of CPNI for winback activity. [29] Accordingly, the record in this proceeding justifies the Commission's reconsideration and repeal of this provision for all carriers.

Some carriers[30] argue that only incumbent local exchange carriers ("ILECs") should be prohibited from utilizing CPNI for winback purposes because Section 222(b) of the Act bars the use of information obtained from other carriers for a carrier's own marketing purposes. As SBC noted, however, a reseller's customer formerly was the end-user of the ILEC and "any other carrier is entitled to use CPNI reflecting the telecommunications service it has rendered to the end-user customer, with customer approval where necessary, without more."[31] Accordingly, "Section 222(b) is not implicated, because no information of another carrier is even used, much less compromised."[32]

Other commentors advocating different treatment for ILECs imply that ILECs have a

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[27] GTE at 9 (citing Petitions of 360, Alltel, AT&T, Bell Atlantic, BellSouth, ComCast, CTIA, Frontier, GTE, MCI, Omnipoint, Paging Network, PCIA, SBC, USTA, Vanguard).

[28] AT&T at 5.

[29] *Id.*

[30] ALTS at 1; C&W at 2; E.Spire at 4; Intermedia at 2; MCI at 15; TRA at 6.

[31] SBC at 19.

[32] *Id.*

monopoly advantage in obtaining advanced notice if a customer switches to another carrier.[33] As clarified by Ameritech, "there is nothing 'advanced' about the notice an ILEC gets."[34] ILECs receive the notification from the new carrier after the customer has already made his or her decision to change, and the change usually has taken place before winback efforts conceivably could occur. Accordingly, the anti-winback rule associated with Section 64.2005(b)(3) of the Commission's rules should be reconsidered and eliminated.

V. The statute does not support that the Commission's imposition of different CPNI obligations on ILECs.

Some competing carriers have argued that ILECs should be subject to more stringent CPNI requirements than other carriers.[35] Some carriers request that the winback rule be applied only to ILECs[36] and others argue that ILECs should be the only carriers prevented from using CPNI in marketing CPE and information services.[37] Parties speculate that an ILEC's status allows it to enjoy an unfair advantage in the market place, and suggest that this status is grounds for imposing a different level of protection for customer privacy.

Notwithstanding this specious argument, there is no evidence in the record supporting an alteration of the Commission's determination that the imposition of stricter requirements on ILECs "would not further the principles of customer convenience and control embodied in

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33 C&W at 4-5; MCI at 15-23.

34 Ameritech at 4.

35 ALTS at 1; C&W at 2; E.Spire at 4; Intermedia at 2; MCI at 15; TRA at 6.

36 C&W at 4; MCI at 15; AT&T at 24.

37 AT&T at 10.

Section 222, and could potentially undermine customers' privacy interests as well."[38] In fact, the imposition of non-uniform CPNI rules would create an anti-competitive environment, in direct violation of Congressional intent. Section 222 ensures that consumer information is protected in a uniform and consistent manner throughout the industry. Imposing disparate regulations or stricter standards on ILECs would undermine the intent of the Act and cause extreme customer confusion on CPNI privacy rights. Consumers expect and are entitled to uniform treatment by carriers. Accordingly, any request for different treatment of ILECs should be disregarded.

VI. The record confirms that the Commission should allow sharing of information among non-BOC affiliates.

Some Petitioners have suggested that the Commission reconsider not only the application of 272 nondiscriminatory safeguards governing CPNI sharing between a BOC and its interLATA affiliate, but also the application of this nondiscriminatory requirement to any ILEC with respect to sharing CPNI with its affiliates.[39] According to one petitioner, Sections 201 and 202 of the Act require that the Commission impose the same regulatory treatment on all ILECs in their respective service territories.[40]

As noted by Sprint, any claims that Section 201 and 202 can be manipulated by the Commission to require that BOC specific provisions under the Act apply to all LECs is "simply

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[38] Bell Atlantic at 2 (citing the Second Report and Order).

[39] AT&T at 19; E.Spire at 6; MCI Petition at 15.

[40] MCI Petition at 18-20.

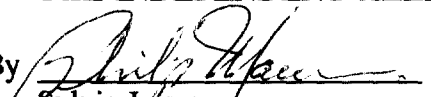
at odds with the fundamental principles of statutory construction."[41] Section 272 requirements apply only to BOCs, and there is no evidence in the record that Congressional concerns regarding customer privacy would be affected adversely by non-BOC sharing of information among affiliates. Even if the Commission were to reconsider reapplying 272 nondiscrimination requirements on BOCs, there is no statutory or public policy basis for imposing these requirements on non-BOC ILECs.

VII. Conclusion

Accordingly, the Commission should reconsider and eliminate the flag and tag requirements, along with the winback and total service marketing requirements. Furthermore, any reconsideration should not result in disparate treatment between ILECs and other carriers, or the imposition statutory mandates directed towards BOCs on non-BOC ILECs.

Respectfully submitted,

THE INDEPENDENT ALLIANCE

By 
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[41] Sprint at 6. Stating further that "[it] would eviscerate the distinctions between the BOCs and other telecommunications carriers that were enacted by Congress." *Id.* Sprint also noted that the Act intentionally applies stricter nondiscrimination and market entry standards to the BOCs than to other LECs. *Id.* at 7.

CERTIFICATE OF SERVICE

I, Colleen von Hollen, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that on this 6th day of July, 1998, a copy of the foregoing Reply Comments of The Independent Alliance was sent by first class, postage prepaid, U.S. mail, to the following:

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